the markets."[64] In New York alone, consumers have saved as much as $700 million per year as a result of section 271 approval.[65] Similar results can be expected in Georgia and Louisiana. Indeed, as BellSouth has explained, an independent and well-respected consumer group has estimated that consumer benefits in Georgia alone may be as high as $300 million per year.[66]

AT&T attempts to obscure these enormous consumer benefits with a barrage of misleading claims about the dire economic consequences of "premature long distance entry." *AT&T Comments* at 73. AT&T's argument fails at the outset because it is based on the assertion that (measured against AT&T's self-created standard) there is insufficient facilities-based residential local competition, especially in Louisiana. *Id.* at 75. But, in a holding squarely on point that AT&T characteristically ignores, this Commission reiterated a few months ago that it "disagree[s] with those commenters that assert under our public interest examination we must consider the level of competitive LEC market share [or] the financial strength of competitive LECs." *Pennsylvania Order* ¶ 126.[67]

In any event, AT&T's arguments are not only legally irrelevant; they are factually and analytically incorrect. First, the overall competitive numbers in 271-approved states speak for

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[64] *See* Rodney L. Pringle, *Powell Says Innovation Will Drive Telecom Upswing*, Communications Today, June 6, 2001.

[65] *See* Telecommunications Research & Action Center, *15 Months After 271 Relief: A Study of Telephone Competition in New York* 8-9 (Apr. 25, 2001) ("An average consumer that switched to Verizon for long-distance service will save between $3.67 and $13.94 a month . . . . [P]hone competition has brought up to $700 million of savings to New York consumers.").

[66] Telecommunications Research & Action Center, *Projected Residential Consumer Telephone Savings* 2 (Sept. 6, 2001), *at* http://trac.policy.net/relatives/17340.pdf.

[67] The Commission has similarly rejected AT&T's and Sprint's arguments about whether current UNE rates provide them with a profitable return. *See Sprint Comments* at 14. The Commission has made plain that such an argument is "irrelevant." *Kansas/Oklahoma Order* ¶¶ 92, 281.

themselves, and, contrary to AT&T's argument, they demonstrate robust and growing competition. As this Commission's own recent *FCC Local Competition Report* confirms, "[s]tates with long-distance approval show [the] greatest competitive activity" in local telecommunications.[68]

To the extent that, either in those states or in Georgia and Louisiana, the amount of competition for residential customers is less than that for other customers, there are obvious reasons for that having nothing to do with whether the local markets are open.[69] In particular, state universal service policies have kept retail rates for those customers artificially low, thus making them less attractive competitive targets. Indeed, that is the lesson of the Texas Public Utility Commission Report[70] that AT&T completely misrepresents. The Texas PUC concluded that "cross-subsidies that have traditionally kept residential rates artificially low have contributed to the lack of competition for residential customers." *TPUC Report* at 83. The Texas PUC thus attributes any disappointment in the level of rural and residential competition to "underlying market conditions and . . . the historical regulatory pricing system for local telephone service." *Id.* at *x*. Former Chairman Hundt has similarly concluded that, "[i]n terms of residential, voice, telephone service . . . about 40 percent of all consumers are paying less than the cost to provide a service. . . . And there's no way that someone else is building an overlapping network to repeat

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[68] *See* FCC News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition* (May 21, 2001).

[69] Moreover, AT&T's estimate of competitive lines is, as explained above in Part I and in the reply affidavit of Elizabeth Stockdale, wildly inconsistent with this Commission's and the GPSC's estimates of CLEC penetration, both of which are based on CLEC-reported figures. AT&T's bald speculation about the number of competitive lines that serve ISPs is similarly baseless, as discussed in the reply affidavit of Valerie Sapp.

[70] Public Utility Commission of Texas, Scope of Competition in Telecommunications Markets of Texas (Jan. 2001) ("TPUC Report").

the experience of offering a below-cost service."[71] The reply affidavit of Dr. William Taylor (Reply App., Tab R, ¶¶ 63-114) expands upon these fundamental economic truths that undermine AT&T's argument.

Dr. Taylor's reply affidavit further explains that it is not surprising that some CLECs have had financial difficulties in recent times, but that the reasons for those difficulties do not support AT&T's (and Sprint's) contentions here. Those reasons include general macroeconomic conditions, including tight capital and credit markets, and the adoption of inefficient technologies or poor market strategies. *See BellSouth Taylor Reply Aff.* ¶¶ 25-33. Again, the Texas PUC agrees with BellSouth, not AT&T, on this point: "As with other stock market bubbles, this one burst, forcing the industry to endure bankruptcies of some leading CLECs and massive restructuring of others." *TPUC Report* at 81. Indeed, in a more candid statement outside of regulatory proceedings, AT&T's chief lobbyist has explained that CLECs "went out and bought a lot of capital, floated a lot of bonds, bought a lot of switches and equipment, and then went out to sign up customers. . . . There's clearly a shakeout going on . . . . Telecommunications has always been a cyclical industry. We're not that different from Wal-Mart. If you have excess inventory, you're hurting until you get that inventory spoken for."[72] However, even CLECs that have declared bankruptcy continue to obtain financing and compete for new customers. *See BellSouth Taylor Reply Aff.* ¶¶ 25-28. And other CLECs that adopted stronger business models have been more successful. *See id.* ¶ 31.

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[71] Reed Hundt, *The Telecom Act Five Years Later: Is It Promoting Competition?*, Panel Discussion to Hearing of the Senate Antitrust, Business Rights and Competition Subcommittee of the Judiciary Committee (May 2, 2001).

[72] *See* George A. Chidi, Jr., *Northpoint's Failure Ripples to Other DSL Services*, PCWorld.com (Apr. 17, 2001) (internal quotation marks omitted), *at* http://www.pcworld.com/news/article/0,aid,47510,00.asp.

In sum, AT&T's (and Sprint's) arguments about the public interest test thus do nothing to contradict the overwhelming market evidence that section 271 entry is in the public interest for a very basic reason: it will save consumers hundreds of millions of dollars.

B. BellSouth's Performance Incentive Plans Meet the Principles Established by This Commission in Previous Orders

The features of an effective performance plan – one that is sufficient to warrant this Commission's approval – are clear. As the Commission explained in the *New York Order*, such a plan should have "a meaningful and significant incentive to comply with the designated performance standards," "clearly-articulated, pre-determined measures and standards," "a reasonable structure that is designed to detect and sanction poor performance," "a self-executing mechanism," and "reasonable assurances that the reported data [are] accurate." *New York Order* ¶ 433. As BellSouth explained in detail in its Application, its "SEEM" plans in Georgia and Louisiana are fully consistent with these principles. *See Application* at 158-60; *BellSouth Varner La. Aff.* ¶¶ 301-355; *BellSouth Varner Ga. Aff.* ¶¶ 305-358.

A few commenters dispute that conclusion. *See AT&T Bursh/Norris Decl.* ¶¶ 130-162; *WorldCom Lichtenberg Decl.* ¶¶ 170-172; *Mpower, et al. Comments* at 43-46. As an initial matter, however, these comments are directly refuted by the GPSC and LPSC. *See GPSC Comments* at 218-21 (the Georgia SEEM plan "is one of the most stringent in the country," and "complies fully" with the "five key characteristics of an effective enforcement plan" articulated by this Commission); *LPSC Evaluation* at 93-95 (the Louisiana SEEM meets this Commission's call for "a comprehensive self-executing enforcement plan . . . to prevent 'backsliding'" after 271 relief).

These state-commission judgments, moreover, are worthy of considerable deference. Following the guidance of this Commission, *see, e.g., New York Order* ¶¶ 11-12, the GPSC and

LPSC have devoted enormous resources to reviewing not only the specifics of BellSouth's proposed plans, but also the competing performance-incentive proposals offered by all interested parties. *See BellSouth Varner Ga. Aff.* ¶ 301; *BellSouth Varner La. Aff.* ¶ 305. And the results of these comprehensive reviews reflect a healthy compromise: although both commissions ultimately adopted the model proposed by BellSouth, both ordered numerous changes to take account of CLEC and state-commission concerns. *See GPSC Comments* at 217 ("Many aspects of the performance measurements and enforcement mechanisms adopted by the Commission were proposed by the CLECs."); *LPSC Evaluation* at 94 (the Louisiana plan was "modified . . . several times . . . to reflect input from the Staff and CLECs"). The resulting plans thus fit comfortably within the deferential standard that this Commission has said applies to review of state-approved performance reporting and incentive plans. *See New York Order* ¶ 433 (confining its review of Bell Atlantic's plans to assessing whether "certain key aspects of these plans . . . fall within a zone of reasonableness"); *see also Pennsylvania Order* ¶ 128 (noting that "states may create plans that ultimately vary in their strengths and weaknesses as tools for post-section 271 authority monitoring and enforcement").[73]

That is especially so in light of the Georgia and Louisiana PSCs' express commitment to review BellSouth's performance reporting and incentive plans on an ongoing basis and to alter those plans as necessary to reflect experience in the market. *See GPSC Comments* at 217 (noting that the GPSC has "provided for a six-month review of performance measures, analogue/benchmarks, change management process, and the enforcement mechanisms plan");

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[73] In Georgia, the SEEM plan has been in effect since earlier this year, and generated $29.9 million in payments in the first five months of its operation. *See GPSC Comments* at 219. AT&T's claim (at 87) that the SEEM plan creates "only minimal exposure" is accordingly incorrect.

LPSC Evaluation at 95 ("this Commission . . . will conduct a six-month review of BellSouth SQM and its remedy plan"). Indeed, these reviews have already begun in both states. *See BellSouth Varner Reply Aff.* ¶ 12. The SQM and the SEEM will thus continue to evolve under the auspices of the GPSC and LPSC "to reflect changes in the telecommunications industry and the [local] market." *Texas Order* ¶ 425.

Indeed, the wisdom of deferring to the judgments of the Louisiana and Georgia PSCs on BellSouth's performance reporting and incentive plans is demonstrated by the particular criticisms offered by CLECs here. The vast majority of these criticisms have *already* been rejected by the LPSC and GPSC. *See GPSC Comments* at 217; *LPSC Evaluation* at 95; *BellSouth Varner Reply Aff.* ¶¶ 124-187; *see also Texas Order* ¶ 426 ("we find it significant that the Texas Commission considered and rejected most of [commenters'] arguments" regarding the reporting and incentive plans). And, in any event, with one narrow exception (discussed immediately below), these commenters do not challenge the overall design of the SEEM. Instead, they contend that certain particular attributes of that design should have been implemented differently. Thus, for example, while endorsing the use of the "truncated z-test" – and, in particular, that test's approach of grouping certain measurements together – AT&T objects to the actual groupings settled on by the GPSC. *See AT&T Bursh/Norris Decl.* ¶¶ 140-144. Likewise, AT&T argues that the set of SQMs to which penalties attach should be broader, and should include, among others, measures that track service order accuracy and average jeopardy interval. *See id.* ¶¶ 148-150. Even if these claims had merit – which they do not, *see BellSouth Varner Reply Aff.* ¶¶ 178-181 – the more important point is that, where, as here, the state commissions are committed to active oversight of the BOC's post-entry performance, these sorts of issues are best left to state commission reviews based on actual market experience.

The same analysis applies to AT&T's and WorldCom's criticisms of the delta adopted by the GPSC and LPSC. *See AT&T Bursh/Norris Decl.* ¶¶ 145-146; *WorldCom Lichtenberg Decl.* ¶ 170.[74] As Dr. Mulrow explained in his opening affidavit, *see BellSouth Mulrow Aff.* ¶ 45 (Application App. A, Tab P), and as the reply affidavits of both he and Dr. Taylor confirm, *see BellSouth Mulrow Reply Aff.* (Reply App., Tab K); *BellSouth Taylor Reply Aff.* ¶ 133, the question of the appropriate delta to be used in a performance-incentive plan is, at bottom, a *policy* decision. As a general matter, CLECs will want a low delta – thus limiting the instances in which performance misses will be attributed to random variation – while BOCs will want a high one (thus increasing those instances). And the job of the state commission is to mediate those disparate views, and adopt a value that, in its view, accommodates the various interests at stake. The GPSC and LPSC have done precisely that. As the reply affidavit of Dr. Mulrow explains, their efforts have resulted in effective enforcement plans, each with a delta that, in the end, is similar to that used in New York and that will not allow BellSouth to avoid payments for any significant substandard performance, even at high order volumes. *See BellSouth Mulrow Reply Aff.* ¶¶ 9-32; *BellSouth Taylor Reply Aff.* ¶ 133-147; *see also* Staff Final Recommendation at 3-14, *BellSouth Telecommunications, Inc. Service Quality Performance Measurements*, Docket No. U-22252(C) (LPSC Feb. 12, 2001) (Application App. D – La., Tab 144).

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[74] Contrary to WorldCom's contention, *see WorldCom Lichtenberg Decl.* ¶ 170, the use of statistical techniques to adjust for random variation has in fact been used in BOC performance plans approved in the context of section 271. *See, e.g., New York Order* App. B, ¶ 14 ("[W]e will employ a 95 percent confidence level one-tailed test, which yields a critical value (or minimum threshold z-score) of –1.645. We note that the New York Commission has adopted this confidence level and critical value for its determination of performance scores. . . .") (footnote omitted).

AT&T's challenge to the "transaction-based" nature of BellSouth's plans, *see AT&T Bursh/Norris Decl.* ¶¶ 130-133, is likewise an unlikely candidate for dispute before this Commission. For one thing, a transaction-based plan such as BellSouth's is best suited to ensuring that remedies vary with the degree to which BellSouth's performance is sub-standard. *See BellSouth Taylor Reply Aff.* ¶¶ 121-123. That variance, in turn, furthers the goal of an effective incentive plan – to deter discriminatory performance – while limiting the incentive of CLECs to "game" the plan and thereby generate uneconomic penalty payments that do not correspond to actual performance disparities. *Id.* ¶ 122. Moreover, as AT&T itself implicitly acknowledges, *see AT&T Bursh/Norris Decl.* ¶ 130, the basic performance-plan structure adopted by Southwestern Bell – which this Commission has repeatedly approved, *see Texas Order* ¶ 425; *Kansas/Oklahoma Order* ¶ 273 – adopts a similar transaction-based approach. *See BellSouth Mulrow Aff.* ¶ 54. AT&T is thus obviously incorrect to contend (at 87) that such an approach is a "fundamental structural flaw" that renders the plan unacceptable.

In sum, BellSouth's SEEM plans in Georgia and Louisiana are well within the "zone of reasonableness" that this Commission has established in prior orders. Commenters' criticisms of those plans are largely duplicative of claims that have already been addressed by the GPSC and LPSC, and can in all events continue to be pressed in the six-month review forums established for precisely that purpose. The plans are thus clearly sufficient to provide a meaningful incentive for BellSouth to continue to provide nondiscriminatory service in the wake of section 271 relief.

C. The Other Arguments Made by Commenters Do Not Demonstrate That Approval of the Joint Application Is Not in the Public Interest

Commenters have also raised a few other purported "public interest" arguments. None warrants rejection of the Application.

These commenters have focused in particular on anecdotal allegations that BellSouth representatives have disparaged competitive carriers and that BellSouth has engaged in allegedly improper campaigns to "win back" customers. *See, e.g., CompTel Comments* at 9-10, 17-23; *Mpower, et al. Comments* at 42; *KMC Comments* at 15-17; *AT&T Comments* at 63. As to the scattered allegations of disparagement, BellSouth has a strict policy prohibiting any employee or authorized representative of BellSouth from criticizing a competitor to a customer or from interfering with any contract between a competitor and its customers. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 38. Accordingly, when BellSouth received such allegations, BellSouth took immediate action to investigate them, and suspended its outbound win-back efforts pending completion of an internal review into those processes and programs. *See id.* That review addressed CLECs' concerns regarding disparagement of competitors and possible misuse of wholesale information by BellSouth's retail units. *See id.* Moreover, BellSouth has adopted a uniform approach to training, managing, and monitoring all third-party sales representatives involved in telesales and telemarketing activity on behalf of BellSouth to ensure that they are informed of these rules and are contractually bound to conform their sales practices to BellSouth's policy. *See id.* ¶ 39. The joint reply affidavit of John Ruscilli and Cynthia Cox discusses these policies, as well as the particular allegations of disparagement in detail. *See id.* ¶¶ 39-59. That affidavit also discusses BellSouth's established policy regarding improper use of CPNI. *See id.* ¶¶ 52, 58-59.

Because BellSouth has been able to respond to such allegations, the LPSC stated in its Evaluation that "there is no evidence in the record put before us of any illicit marketing activity." *LPSC Evaluation* at 92. The GPSC has similarly concluded that "BellSouth has responded to each instance of alleged misconduct raised by Access Integrated [the CLEC that primarily raised

these arguments below], some of which BellSouth disputes, and described in detail the steps BellSouth has taken to ensure that such incidents do not reoccur." *GPSC Comments* at 44-45. In light of those findings, and the extensive efforts that BellSouth has undertaken to train its personnel and address these allegations of disparagement, these CLEC claims provide no basis to reject this Application. *See, e.g., Texas Order* ¶ 431 (Commission will not deny Application based on "isolated instances of allegedly unfair dealing or discrimination").

With respect to the more general issue of win-backs, it is important to stress that, as this Commission itself has acknowledged, there is nothing inherently anticompetitive about BellSouth's attempts to win back customers that have chosen other telecommunications providers. On the contrary, that is the essence of competition. As this Commission has explained, restrictions on win-back activities "may deprive customers of the benefits of a competitive market."[75] The Commission further stated that "winback facilitates direct competition on price and other terms, for example, by encouraging carriers to 'out bid' each other for a customer's business, enabling the customer to select the carrier that best suits the customer's needs," and that, "*once a customer is no longer obtaining service from the ILEC, the ILEC must compete with the new service provider to obtain the customer's business. We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice.*" *CPNI Reconsideration Order* ¶¶ 69-70 (emphasis added).

Moreover, both the GPSC and LPSC have already created reasonable rules of the road for win-back activities to ensure that they are not anticompetitive. In Louisiana, these rules are

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[75] Order on Reconsideration and Petitions for Forbearance, *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 14 FCC Rcd 14409, ¶ 69 (1999) ("*CPNI Reconsideration Order*").

permanent. In Georgia, they are effective on an interim basis pending the outcome of an ongoing proceeding. In both states, BellSouth is prohibited from engaging in win-back activities for seven days after the customer switches providers. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 36. The relevant state commissions have thus shown themselves to be committed to resolving any legitimate CLEC complaints on this issue, and there is no reason for this Commission to intercede.

Commenters also claim that BellSouth has instituted an anticompetitive "local freeze" program – that is, a program that allows a customer to request that BellSouth get his or her express permission before changing service to another carrier. *See Mpower, et al. Comments* at 42. That claim is misguided. BellSouth has no such program in Georgia, and it has one in Louisiana because the LPSC *ordered* that a local freeze option be made available. *See BellSouth Ruscilli/Cox Reply Aff.* ¶¶ 94-96. BellSouth's compliance with the LPSC's order on this issue hardly provides a basis to reject this Application.[76]

VII. BELLSOUTH MEETS ALL OTHER CHECKLIST OBLIGATIONS

In addition to the issues discussed above, commenters have raised in scattershot fashion a variety of additional issues concerning checklist compliance. Even the commenters themselves, however, cannot agree on the significance of these issues. Many are raised by only a single CLEC. None is in common across even a substantial number of oppositions, suggesting that none of these issues has had any real competitive effects. None, moreover, was raised by DOJ.

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[76] Other arguments can be dismissed even more quickly. DIRECTV Broadband's speculation (at 1, 3-6) about how BellSouth will market interLATA ATM transport services provides no basis for rejection. BellSouth has demonstrated that it will adhere to section 272, as well as any other legal obligations, upon approval, and no party bothers to contest that showing. No more is required. Finally, the reply affidavit of Pavan Bhalla (Reply App., Tab B) refutes AT&T's baseless assertion that BellSouth and Qwest have agreed not to compete in each other's markets.

We respond to all these allegations in detail below. A couple of general points are in order first, however. With few exceptions, these allegations have already been presented to the GPSC or LPSC, which, after careful investigation, either found them unjustified or resolved any problems that might have existed. With few exceptions, BellSouth has met or surpassed the performance measures established for each of these issues. And, *without* exception, both the GPSC and the LPSC have correctly concluded, based on a full record, that BellSouth is in complete compliance with the checklist. Indeed, no commenter has challenged BellSouth's compliance with checklist items 3 (poles, ducts, and conduits), 5 (interoffice transport), 9 (access to telephone numbers), or 10 (signaling). Similarly, no commenter contests BellSouth's compliance with section 272.

A. Checklist Item 1: Interconnection

Trunk Blockage. Several commenters claim that BellSouth's trunk blockage performance is inadequate. *See AT&T Comments* at 46-47; *Sprint Comments* at 18-19; *NuVox/Broadslate Comments* at 2-4. They do not contend that BellSouth failed to provide nondiscriminatory service to CLECs under the relevant GPSC- and LPSC-approved performance measure. Instead, they seek to rely on a superseded measure that (as explained below) was far inferior to the measure that both state commissions adopted.

The GPSC found that BellSouth met the relevant trunk blockage measure in Georgia in May, July, and August, and that the blockage between 7 and 8 a.m. in March and April was "attributable to the lack of trunks in two reciprocal trunk groups between BellSouth and [only] one CLEC." *GPSC Comments* at 40; *cf. Massachusetts Order* ¶ 185 n.588 (excluding impact of "a brief equipment failure that affected six . . . trunk groups"). The GPSC also found "evidence in the record that CLECs have been the cause of at least some of the trunk blockage problems by providing poor trunk forecasts or failing to inform BellSouth about expected increases in traffic

volume." *GPSC Comments* at 40; *see also BellSouth Milner Reply Aff.* ¶ 6 (noting that no CLEC has challenged Mr. Milner's Georgia or Louisiana testimony regarding CLECs' trunk forecasting responsibilities). Indeed, NewSouth, which had complained about trunk provisioning and accompanying blockage before the GPSC, *see GPSC Comments* at 40-41, now *supports* BellSouth's Application before this Commission because "improvements in trunk provisioning in Georgia and Louisiana have resulted in levels of trunk blocking that do not interfere with NewSouth's ability to operate its network and compete for customers," *NewSouth Comments* at 5-6; *see also id.* at 7 ("BellSouth's management generally has been responsive to NewSouth's concerns."). Moreover, the LPSC found "that BellSouth met the approved aggregate benchmark" in April, May, June, July, and August. *LPSC Evaluation* at 17; *see also BellSouth Varner Reply Aff.* ¶ 87 (noting that BellSouth also met this measure in Louisiana in September 2001). Although BellSouth did not meet the relevant measure in Georgia in September, that was because of a unique situation relating to the September 11th tragedy, and it does not present a systemic concern. *See id.* ¶ 90.

Nor does any commenter contest that, unlike the currently approved measure, the superseded measure failed to account for the *size* of a trunk group that had experienced blockage, as Mr. Varner explained in his affidavit accompanying BellSouth's Application. *See BellSouth Varner Ga. Aff.* ¶ 101; *BellSouth Varner La. Aff.* ¶ 116. "As a result, very small trunk groups or very large trunk groups, both with blocking, would have been reported the same, even though there was [a] substantially different impact on the calling experience." *Id.*; *see also BellSouth Milner Reply Aff.* ¶ 12. In addition, the superseded measure was developed as a Trunk Group Service Report, which reported call blocking data "in 'raw' form, without excluding groups that blocked calls for reasons other than BellSouth's performance." *BellSouth Milner Reply Aff.*

¶ 5.[77] The superseded measure also focused only on individual trunk groups, without meaningfully assessing "the quality of end-to-end service" – *i.e.*, the amount of CLEC customer calls that were actually blocked. *Id.* ¶ 20; *see also id.* ¶ 13. As explained in detail in the reply affidavit of Keith Milner, the new measure corrects these and other flaws in the superseded measure. *See id.* ¶¶ 10-14, 19-24. Both state commissions were thus correct to replace this measure because it failed accurately to portray trunk blockage performance.

Commenters claim that the currently approved measure includes some categories of CLEC trunks that "carry predominantly *BellSouth* traffic." *AT&T Comments* at 47. That is not correct: "Calls from BellSouth customers to other BellSouth customers are *not* included as part of the CLEC measurement." *BellSouth Milner Reply Aff.* ¶ 17. CLEC-only calls are transported over both direct trunks, which have one terminus at the CLEC switch, and common trunks, which deliver traffic to the BellSouth tandem and are not connected directly to the CLEC's network. *Id.* For direct trunks, CLEC-only calls are precisely determined since they carry only CLEC traffic. For common trunk groups, the portion of CLEC-only calls is developed from past traffic data. *Id.*; *see also id.* Exh. WKM-5 (presenting specific algorithms used for these calculations); *id.* ¶ 16 (explaining that BellSouth has previously provided this information to CLECs in state proceedings). Accordingly, the Commission should reject commenters' challenges to the trunk blockage measure approved by both the GPSC and the LPSC.

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[77] BellSouth performed a root cause analysis for each trunk group on the Trunk Group Service Reports for the May-August 2001 period of which commenters complain. Roughly half of the reported trunk group blockages were caused by CLECs, and one-quarter of the blockages did not actually cause blocked calls because that traffic was routed to overflow trunks; only one-quarter of the blockages were attributable to BellSouth. *See BellSouth Milner Reply Aff.* ¶ 7. Based on that analysis, "[t]he aggregate ratios for BellSouth administered CLEC groups and BellSouth local groups differ by about 1% which means that the results for BellSouth administered groups and CLEC administered groups are essentially equal," thus indicating parity performance. *Id.* ¶ 9.

Collocation. Mpower claims that it cannot order power for its collocation space in the 60 amp to 225 amp range. *Mpower, et al. Comments* at 29.[78] That is incorrect. If Mpower wants to order, say, 100 amps, it could simply run two power cables and connect them to two industry standard fuse sizes that equal 100 amps (*i.e.*, 60 amps and 40 amps). *BellSouth Gray Reply Aff.* ¶ 11. BellSouth generally has been unable to provide fuses between 60 amps (running from the battery distribution fuse board)[79] and 225 amps (running from the main power board) for technical and safety reasons. *Id.* ¶¶ 21-24. Moreover, "it is BellSouth's responsibility to protect the integrity of the public switched network, as well as to ensure the safety of all BellSouth and CLEC employees working in and around its central offices." *Id.* ¶ 24. With those considerations in mind, BellSouth has just implemented additional power options of 70, 80, 90, and 100 amps by working with electrical manufacturing vendors to design a field retrofit for its battery distribution fuse boards, which will be deployed in central offices on an as-ordered basis. *Id.* ¶ 23. Notification of this offering has been posted on BellSouth's Interconnection web site. *Id.*

There is also no merit to Mpower's contention that BellSouth's power charge based on fused amps, rather than load amps, is unfair. *Mpower, et al. Comments* at 29-30. BellSouth's rates for power incorporate a two-thirds multiplier that takes into account the difference between fused amps and load amps. Thus, 60 fused amps times the power rate (which already includes the two-thirds multiplier) results in a charge for only 40 load amps – in effect a per-load amp

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[78] Mpower relies on arguments made by NewSouth in a North Carolina proceeding. *Mpower, et al. Comments* at 29-30. But NewSouth *supports* BellSouth's Application, having concluded that BellSouth's performance, "including collocation, is sufficient to provide NewSouth a meaningful opportunity to compete in Georgia and Louisiana." *NewSouth Comments* at 7. For its part, Mpower did not participate in LPSC proceedings and its GPSC filings raised no collocation issues. *See BellSouth Gray Reply Aff.* ¶ 3 (Reply App., Tab E).

[79] It is extremely uncommon for a single piece of equipment ever to need more than 60 amps. *BellSouth Gray Reply Aff.* ¶ 12.

charge because the power load should generally be two-thirds the capacity of the fuse that protects the power feed. *See BellSouth Gray Reply Aff.* ¶¶ 15-18; *see also id.* ¶¶ 33-40.[80]

Moreover, the Georgia and Florida PSCs have already upheld BellSouth's method of power assessment, finding that the added cost of metering to determine actual load usage could well offset any savings over a per-fused-amp charge. *See BellSouth Gray Reply Aff.* ¶¶ 19-20. This Commission has also reached a similar conclusion in declining to require "LECs to bill power on a measured, actual use basis," which "would require the installation of metering equipment, and it is not clear that the benefits of such a billing arrangement justify the cost of this equipment (which would have to be paid by interconnectors)." Second Report and Order, *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd 18730, ¶ 59 (1997); *see also BellSouth Gray Reply Aff.* ¶¶ 29-32. Similarly, "[a]fter reviewing BellSouth's justification for its requirements, the LPSC approved BellSouth's power options." *LPSC Evaluation* at 23 n.10; *see LPSC Staff Final Recommendation* at 33-34. This Commission should do the same. *Cf. Pennsylvania Order* ¶ 103 (declining to use a section 271 proceeding to interfere with "the orderly disposition of intercarrier disputes by the state commissions" and expressing "confidence" in state commissions' ability to resolve collocation power pricing disputes "consistent with our rules").

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[80] Mpower points out that Verizon, in the Massachusetts 271 proceeding, agreed to change its per-fused-amp collocation power assessment to a per-load-amp charge. *Mpower, et al. Comments* at 30. But there was no indication that Verizon's power rates contained a multiplier similar to BellSouth's, and, in any case, BellSouth's power charges are considerably lower than Verizon's. *See BellSouth Gray Reply Aff.* ¶ 36; *see also id.* ¶¶ 37-39.

B. Checklist Item 6: Unbundled Local Switching

AT&T alone claims that BellSouth fails to provide "appropriate electronic ordering processes for competitive LECs that want more than one OS/DA routing option," because the CLEC would have to enter line class codes for multiple routing options. *AT&T Comments* at 67. But AT&T nowhere contests that "CLECs may obtain multiple customized routing options through AIN without having to specify line class codes." *Application* at 120 (citing *BellSouth Milner Aff.* ¶ 183). That should be the end of the matter. In the *Second Louisiana Order*, the Commission stated that BellSouth's AIN offering would "meet the requirements of" this checklist item upon completion of the testing phase and full implementation. *Second Louisiana Order* ¶ 222. Now, of course, AIN is available and BellSouth stands ready to provide it. *BellSouth Milner Aff.* ¶¶ 184-185. Nothing more is required. *See Texas Order* ¶ 340 (finding that AIN satisfies the customized routing requirement even where rates for line class codes had yet to be established).

Moreover, this Commission has held that line class codes are *not* "among the specific attributes of the switching element." *Id.* ¶ 342; *see id.* ¶ 342 & n.958 ("If [a commenter] believes we should include LCC among the specific attributes of the switching element, we note that there are venues better suited to airing the issue." One may, for example, "file a petition for rulemaking, or may seek to include its argument in our pending *UNE Remand Order* reconsideration proceeding."). In any case, BellSouth has a legal obligation to comply with the GPSC's arbitration order requiring it to offer CLEC codes for multiple routing patterns, without specifying line class codes, by the end of this year. *See Application* at 120; *compare Pennsylvania Order* ¶ 108 ("[a]lthough we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions") *with GPSC Comments* at 176 (finding

compliance with this checklist item and explaining that the GPSC "expects BellSouth to comply fully with the [GPSC's] decision, and in the event this is not the case, AT&T can bring this matter to the [GPSC's] attention").[81]

C. Checklist Item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services

As demonstrated in the original comments filed in this proceeding, BellSouth provides nondiscriminatory access to 911, E911 and OS/DA services in satisfaction of checklist item 7. *See Application* at 121-27; *BellSouth Sapp Aff.* ¶ 4 (Application App. A, Tab R); *BellSouth Milner Aff.* ¶¶ 194-229. Commenters fail to call that conclusion into question.

AT&T claims that BellSouth's OLNS branding feature does not give its customers menu options that will allow their calls to be routed to a business or residence repair service when they dial "0" or "0 plus." *AT&T Comments* at 68-69. Because BellSouth customers have that option, says AT&T, BellSouth is not providing access to OS/DA on a nondiscriminatory basis. *Id.*

AT&T's claims are both misleading and erroneous. First, what AT&T fails to understand is that, unlike the LCC and AIN methods, OLNS is not a form of customized routing, but simply a method of providing customized OS/DA branding *at the BellSouth platform.* OLNS gives CLECs the ability to route their traffic over BellSouth's common groups to BellSouth's OS/DA platform in a way that allows for the identification of CLEC calls, even though they are on a common trunk group with BellSouth calls, so that those calls can receive the appropriate branding upon arrival at the OS/DA platform. *Application* at 127; *BellSouth Milner Aff.* ¶ 224. AT&T recognizes that it could get the automated repair routing it wants via "[e]ither LCCs or

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[81] AT&T has agreed with BellSouth on language in AT&T's interconnection agreement regarding electronic ordering codes. Although BellSouth has repeatedly requested that AT&T participate in the development of these codes, AT&T's subject matter experts have refused to meet with BellSouth to complete this work. *See Milner Reply Aff.* ¶¶ 51-52.

AIN." *AT&T Bradbury Decl.* ¶ 285; *see BellSouth Milner Reply Aff.* ¶ 56 ("[T]he LCC and AIN methodologies [can] provi[de] the CLEC's callers with options of having their calls automatically routed to the CLEC's residence or business service or repair centers."). Nonetheless, AT&T is demanding that OLNS be modified by BellSouth, at substantial cost, to also provide additional customized routing functionality. *Id.* To do so would require BellSouth to install special trunks from its platform to transport AT&T customer repair calls to an AT&T repair platform. There is simply no basis for imputing such an obligation to BellSouth. If AT&T or any other CLEC is willing to provide the requisite funding, however, BellSouth is willing to provide this enhancement to OLNS pursuant to the BFR process. *Id.*

In any event, as the GPSC held, "the capability for automatic routing of calls to a service or repair center is not an OS/DA function." *GPSC Comments* at 185. That is because checklist item 7 requires access only to 911, directory assistance, and operator services; it does not require routing to repair services. 47 U.S.C. § 271(c)(2)(B)(vii). The Commission has specifically held that "nondiscriminatory access to operator services" only means that "a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number." Second Report and Order and Memorandum Opinion and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd at 19392, ¶ 112 (1996). The Commission's regulations also employ a similar definition of operator services. *See* 47 C.F.R. § 51.217(c)(2) ("[a] LEC must permit telephone service customers to connect to operator services offered by that customer's chosen local service provider by dialing '0,' or '0' plus the desired telephone number"). AT&T concedes that its customers are able to connect to a local operator when they dial "0," or "0 plus" the desired number, but AT&T believes its

customers should also be entitled to a menu option that includes repair services. *See AT&T Comments* at 69. Nothing in this Commission's rules would support such an additional routing requirement.[82]

The balance of the comments on this checklist item are no more persuasive. They offer only the kind of anecdotal evidence that this Commission has previously rejected as insufficient to warrant a finding of noncompliance. *See Texas Order* ¶ 372.

In particular, KMC points to one incident in Louisiana where the incorrect name and number of a medical facility were allegedly listed on a 911 operator's screen. *KMC Comments* at 13-14; *KMC Demint Aff.* ¶¶ 9-10. KMC extrapolates from this isolated incident and other unsubstantiated allegations regarding the accuracy of caller ID information that BellSouth "may have a global translation problem." *KMC Comments* at 14. That inference is unfounded. As explained in the affidavit of Valerie Sapp filed with BellSouth's Application, the lone incident involving the Shreveport medical facility is likely attributable to KMC's failure to provide accurate data to BellSouth for inclusion in the 911 database. *BellSouth Sapp Aff.* ¶ 19; *see also BellSouth Sapp Reply Aff.* ¶ 3. KMC is responsible for the accuracy of the data that are input into the 911 database. *BellSouth Sapp Aff.* ¶ 19. BellSouth simply updates the database with information provided by the CLEC. *Id.* In sum, as the LPSC held on this issue, "the [LPSC] believes that this isolated example is not indicative of any systematic failure on BellSouth's part." *LPSC Evaluation* at 78.

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[82] Although the FCC's regulations also include adjunct features to operator services or directory assistance (such as rating tables or customer information databases) as part of the services that a BOC is required to provide, *see* 47 C.F.R. § 51.217(c)(3)(v), such adjunct features in no way include repair services.

D. Checklist Item 8: White Pages Directory Listings for CLEC Customers

In both Georgia and Louisiana, BellSouth provides white pages directory listings for customers of any carrier in compliance with the requirements of checklist item 8. *See Application* at 127-29; *BellSouth Hudson Aff.* ¶¶ 6-7 (Application App. A, Tab J); *BellSouth Hudson Reply Aff.* (Reply App., Tab G); *BellSouth Milner Aff.* ¶ 224; *BellSouth Milner Reply Aff.* ¶ 59. KMC alone disputes BellSouth's compliance with this requirement by rehashing stale and anecdotal complaints that have been previously entertained and rejected by both the GPSC and LPSC. *See GPSC Comments* at 189 ("Nor does this Commission agree with KMC that BellSouth has failed to satisfy Checklist Item 8 because of alleged problems with listings for KMC's customers"); *LPSC Evaluation* at 84 ("[t]he LPSC . . . does not believe that the isolated events indicate a systemic failure that would overturn our previous finding."). This Commission has similarly rejected such anecdotal and isolated claims as insufficient to warrant a finding of noncompliance. *See Texas Order* ¶ 372.

First, KMC points to an instance in April of this year when it alleges that BellSouth lost KMC's directory listings in Augusta, Georgia. *KMC Comments* at 11. That is simply untrue. BellSouth has never lost any of KMC's listings in Augusta. On the contrary, BellSouth responded to a late request from KMC to make certain changes in listing for some KMC customers. *BellSouth Hudson Reply Aff.* ¶¶ 4-9. As described in the reply affidavit of Terrie Hudson, BellSouth worked closely with KMC despite the short time-frame; those changes were implemented successfully; and there is no evidence that KMC's directory listings were lost in the process. *Id.*

KMC also alleges that BellSouth did not give it adequate notice of a change in procedures for submission of directory listings that became effective in October 2000. *KMC Comments* at 12. KMC claims that, as a result, its Savannah office had to reenter directory

listings. *Id.* Contrary to KMC's claims, BellSouth's revised process for submitting directory listing first became available in January 2000, more than seven months before it became fully implemented. *BellSouth Hudson Reply Aff.* ¶ 10. Moreover, updates to the new process were posted as early as August 2000. *Id.* Therefore, KMC is mistaken when it claims it lacked adequate notice of the transition to the new system.

KMC also points to two isolated instances where it claims that BellSouth printed incorrect numbers for KMC customers in the directory listings. *KMC Comments* at 12; *KMC McLaughlin Aff.* ¶¶ 14-18. In the first instance, isolated human error by two BellSouth employees was responsible for the one incorrect listing in Augusta, Georgia, and the error has since been remedied. *See BellSouth Hudson Reply Aff.* ¶¶ 11-12; *see also BellSouth Milner Reply Aff.* ¶ 59. In the other case, BellSouth believes that KMC incorrectly asserted that BellSouth published an error in a listing in Savannah, Georgia. *BellSouth Hudson Reply Aff.* ¶ 11.[83]

KMC also complained about the handling of a complex, or caption, listing in Shreveport, Louisiana. In fact, BellSouth responded to a late request from KMC and correctly printed the set of listings. Neither KMC's assertion, nor its claim of repeated errors in directories, is supported by the facts. *See BellSouth Hudson Reply Aff.* ¶ 14.

E. Checklist Items 11 and 12: Local Number Portability and Local Dialing Parity

The GPSC, after a thorough review, has found that "BellSouth is providing local number portability consistent with the requirements of Section 251(b)(2) and applicable FCC

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[83] KMC's Comments list one of the incorrect listings as occurring in Savannah, Georgia. *KMC Comments* at 12. BellSouth is not aware of any KMC complaints regarding incorrect listings in Savannah; BellSouth assumes KMC made a mistake and intended to refer to another incident in Augusta, Georgia. *BellSouth Hudson Reply Aff.* ¶ 11.

regulations." *GPSC Comments* at 200. That conclusion – which echoes that of the LPSC as well (*see LPSC Evaluation* at 86-87) – is correct. No party to this proceeding challenges the basic facts: BellSouth has implemented the FCC-approved method for LNP; LNP is available in 100% of BellSouth switches in Georgia and now in Louisiana; and BellSouth's performance on the most significant LNP performance metrics has been excellent. Perhaps the most significant fact is this: by the end of August 2001, BellSouth had ported more than 450,000 access lines in Georgia; more than 130,000 in Louisiana, and more than 2.2 *million* region-wide. In the face of this record of effective performance and burgeoning local competition, the anecdotal complaints of AT&T (no other party raises any significant independent complaint about BellSouth's performance[84]) are unpersuasive. *See, e.g., Texas Order* ¶ 372.

AT&T raises four objections to BellSouth's LNP performance. First, AT&T claims that BellSouth reassigns ported numbers to BellSouth customers. *AT&T Comments* at 36-37; *AT&T Berger Decl.* ¶¶ 13-18. Second, it claims that its customers lose inbound calling and experience double billing. *AT&T Comments* at 34-36; *AT&T Berger Decl.* ¶¶ 19-27. Third, it argues that some of its callers lose caller ID. *AT&T Comments* at 37-38; *AT&T Berger Decl.* ¶¶ 28-34. Finally, it argues that BellSouth markets non-portable numbers to its retail customers. *AT&T Comments* 38-39; *AT&T Berger Decl.* ¶¶ 35-39. In addition, AT&T and others also raise questions about BellSouth's treatment of a single LNP performance metric, LNP Disconnect

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[84] El Paso devotes three pages of their comments (at 14-16) to a summary of AT&T's comments before the GPSC but include no independent data or legal argument. They even repeat incorrect allegations that AT&T has abandoned. *Compare El Paso, et al. Comments* at 15 (alleging that only one or two people provide support for LNP-related problems) *with BellSouth Ainsworth Aff.* ¶ 181 (Application App. A, Tab A) *and BellSouth Ainsworth Reply Aff.* ¶ 57 (refuting claim). Sprint (at 19-20) likewise echoes AT&T's comments.

Timeliness. *See AT&T Bursh/Norris Decl.* ¶¶ 64-69; *El Paso, et al. Comments* at 16. None of these objections withstands scrutiny.[85]

Number Reassignment. BellSouth has already addressed most of AT&T's allegations regarding number reassignment. As described in the affidavit of K.L. Ainsworth, when a CLEC ports a number, the number is marked to prevent reassignment. *BellSouth Ainsworth Aff.* ¶ 173. BellSouth has previously identified two problems that led to instances of duplicate assignment of ported numbers and it has addressed both. *Id.* ¶¶ 173-176. The first involved orders that were issued without a certain "field identifier"; without that field identifier the number could be mistakenly reassigned. In December 1999, BellSouth modified its order negotiations system to correct this problem and reviewed its embedded base of numbers to correct prior errors. *Id.* ¶ 174. The second issue emerged in the last quarter of 2000. BellSouth determined that, due to a software upgrade, when a CLEC ported a block of DID numbers, only the lead number would be marked as ported. BellSouth has implemented a manual work-around to this problem and a software solution is being pursued. *Id.* ¶ 175. *See also GPSC Comments* at 202-03.

As for AT&T's complaint that BellSouth has not checked the numbers assigned to legacy-TCG customers, *AT&T Berger Decl.* ¶ 17, this allegation is incorrect. As BellSouth has made clear in correspondence with AT&T, AT&T and former-TCG customers' numbers are consistently being checked. *See BellSouth Ainsworth Reply Aff.* ¶ 92.

Loss of Inbound Calling and Double Billing. AT&T's complaints about customers' loss of inbound calling are unsubstantiated. BellSouth follows a specific, well-documented process to ensure efficient porting of numbers. For the vast majority of orders, BellSouth assigns a

[85] El Paso (at 15-16) also claims that BellSouth's performance is inadequate to show adequate LNP performance. As BellSouth explained in its Application, its performance data in fact show excellent performance. *Application* at 135-36; *see also GPSC Comments* at 200-02.

trigger to a number to be ported once the CLEC's LSR has been accepted as complete; for most orders, the LNP Gateway System automatically issues a trigger order with a zero due date. *BellSouth Milner Reply Aff.* ¶ 60. This type of order does not require manual intervention, and BellSouth's process meets or exceeds any national standards for number portability. *Id.* For more complex orders, BellSouth puts in place a Project Team to oversee conversion. *Id.* In such cases, the Project Manager works with the requesting CLEC to ensure that the process is carried out as smoothly as possible. *Id.* ¶ 61. Although AT&T, for purposes of this regulatory proceeding, claims that there have been "chronic problem[s]" and that it has "addressed this problem with BellSouth several times," *AT&T Berger Decl.* ¶ 23, the facts tell a different story. BellSouth received a letter from AT&T on August 14, 2000, related to LNP conversion problems with DID numbers assigned to a PBX. *BellSouth Milner Reply Aff.* ¶ 62. A few days later, BellSouth sent a response outlining BellSouth's process and requesting a list of affected orders. *Id.* AT&T never responded. If the problem had indeed been "pervasive" and had "an impact on customers," AT&T would not have failed to pursue the problem. *Id.* Indeed, the GPSC specifically considered AT&T's allegations on this score and concluded that BellSouth's approach is "a reasonable one." *GPSC Comments* at 203 (noting that the FCC had rejected a similar claim in the *Texas Order* (¶ 372)).[86]

Complaints about double billing are also unsubstantiated. A customer will of course receive a duplicate bill in the month during which the customer changes service and for any

[86] AT&T's effort to use AT&T's own mistakes – in Kentucky – as an argument against 271 approval in Georgia and Louisiana, *AT&T Berger Decl.* ¶ 24, should be rejected. The Kentucky PSC dismissed AT&T's complaint about the incident in question; the GPSC has observed that BellSouth "cannot properly be held responsible" for AT&T's errors. *GPSC Comments* at 203. Indeed, of more than 56,000 numbers ported to AT&T's Media One for conversion in Georgia, AT&T has reported not a single problem of the kind that occurred in Kentucky. *BellSouth Milner Reply Aff.* ¶ 64.

services that BellSouth continues to provide. *BellSouth Ainsworth Reply Aff.* ¶ 94. Moreover, if a CLEC fails to port a number properly, the order will not be processed properly and billing will continue until the porting discrepancy is resolved. *Id.* To the extent that any double billing problem attributable to BellSouth has arisen, BellSouth has worked within the various collaboratives to investigate and resolve, where necessary, these types of issues. *Id.* BellSouth's Billing Resolution Group will investigate and work with the CLEC to resolve any individual issues in an expeditious manner. *Id.*

Caller ID. AT&T's complaint about caller ID is baseless. BellSouth is now completing its implementation of ten-digit Calling Name Global Title Translation in its SS7 network region-wide; however, that implementation is already complete in Georgia and Louisiana. *BellSouth Milner Reply Aff.* ¶ 65. AT&T's suggestions to the contrary are incorrect.[87] And while AT&T claims that it has had "at least one" customer who has continued to experience problems with caller ID, in fact the problem complained of was one affecting all callers – including BellSouth's retail customers – due to a hardware problem in Florida that BellSouth has repaired. *Id.*

KMC offers two anecdotal reports of problems with caller ID in Shreveport and Monroe, Louisiana. *KMC Demint Aff.* ¶ 10; *KMC Braddock Aff.* ¶ 8. As explained in detail in the reply affidavit of Keith Milner, there are a number of possible explanations for the reported problems, most of which relate to problems in KMC's network or systems. *BellSouth Milner Reply Aff.* ¶¶ 67-72. KMC should perform testing on its own network and, if it concludes the problem is in the BellSouth network, work with BellSouth to resolve it. *Id.* ¶¶ 71-72. BellSouth stands ready

[87] AT&T's complaints about the manual work-arounds are thus academic but in any event baseless. *See BellSouth Milner Reply Aff.* ¶ 66. Likewise, AT&T's effort to rely on an order of the Tennessee Regulatory Authority ignores the fact that BellSouth agreed to resolve the issue complained of there before the TRA issued its order – in keeping with a schedule that BellSouth published before AT&T filed its complaint. *Id.*

to assist KMC in this process. *Id.* In sum, KMC offers no evidence that BellSouth has caused its customers any problems with caller ID.

"Odd-Ball" NXX Codes. AT&T argues that there are certain telephone numbers assigned by BellSouth that are not portable and that cannot be dialed by CLEC customers. *AT&T Berger Decl.* ¶¶ 35-39. AT&T's argument is based on several misconceptions.

These odd-ball NXX codes involve four separate types of numbers. The first are codes used for internal BellSouth functions. These numbers are never assigned to retail customers; require no special trunking, and can be accessed by AT&T. *BellSouth Milner Reply Aff.* ¶ 73. The second are "choke" codes, which are used to restrict access to prevent network congestion during mass calling events. The Southeastern LNP Operations Team (of which AT&T is a member) rightly agreed that these codes would not be portable to avoid generating additional LNP query load during mass calling events. *Id.* The actual numbers that these "choke" codes point to are portable, however. *Id.* ¶ 74. The third situation involves a grandfathered BellSouth service called ZipConnect (sm) that pre-dated LNP. Other than numbers used for BellSouth internal functions or testing, there are 312 such numbers in service throughout BellSouth territory. *Id.* ¶ 75. Again, CLECs can allow their customers to access these numbers by obtaining routing instructions from BellSouth; the numbers pointed to by these codes can be ported. *Id.* Finally, BellSouth offers another grandfathered pre-LNP service called Uniserve that similarly permits customers to publish a single number within a LATA. *Id.* ¶ 76. A carrier's customers can access these numbers if the carrier installs a trunk group to the appropriate BellSouth tandem. *Id.* ¶ 77. The GPSC has approved this arrangement, noting that the requirement for trunking "is consistent with what BellSouth and other telecommunications carriers are required to do." *Id.* There are only 33 Uniserve numbers in service in Georgia and

30 in Louisiana, all of which have been in service since prior to implementation of any LNP requirement. *Id.* None of these calling arrangements – involving as they do only a handful of numbers throughout the BellSouth region – constitutes a barrier to competition in Georgia or Louisiana. *Id.* ¶ 78.

Performance Measurement Issues. AT&T and others argue that BellSouth's failure to meet the LNP Disconnect Timeliness Measure is evidence of poor performance. It is not. As BellSouth has already explained, the disconnect timeliness performance measurement does not reflect actual customer experience. *Application* at 136; *BellSouth Varner Ga. Aff.* ¶¶ 45-48. And though El Paso (at 16-17) accuses BellSouth of engaging in "self-help" by not paying performance penalties associated with this measurement, the GPSC disagrees. First, in an order dated October 22, 2001, the GPSC has granted BellSouth's motion to modify the disconnect timeliness performance measurement. *See BellSouth Varner Reply Aff.* ¶ 131. Moreover, the GPSC held that any performance penalties associated with this measurement should be held in escrow pending further proceedings. *Id.* ¶ 132. Finally, NuVox claims that the performance measurement data for NuVox are incomplete. *NuVox/Broadslate Comments* at 5-6. That is wrong. BellSouth's report is consistent with the data reported by NuVox; it appears that NuVox's expert may have misinterpreted the data that BellSouth provided. *BellSouth Varner Reply Aff.* ¶ 24.

F. Checklist Item 13: Reciprocal Compensation

El Paso (at 37-39) complains that US LEC has been forced to litigate over payment of reciprocal compensation. The short answer to this complaint is that this dispute has involved reciprocal compensation for Internet-bound traffic, which is not (as the Commission has now repeatedly held) a checklist item. *Application* at 139 n.90. All such contractual disputes involve disagreements over the interpretation of contract language; such disputes may arise in any

commercial relationship and pose no barrier to competition. *See BellSouth Ruscilli/Cox Reply Aff.* ¶ 32. Moreover, US LEC has now settled its dispute over reciprocal compensation with BellSouth, to the evident satisfaction of its president. *Id.* As the GPSC has properly found, "BellSouth has complied with Checklist Item 13." *GPSC Comments* at 208.

G. Checklist Item 14: Resale

As BellSouth explained in its Application, in the *Second Louisiana Order*, this Commission held that, except for certain OSS issues that BellSouth has now fully addressed (as DOJ acknowledges with respect to resale), BellSouth complies with this checklist requirement. *See Second Louisiana Order* ¶ 319. BellSouth continues to comply with those obligations, as both the GPSC and LPSC have already found. *See GPSC Comments* at 216; *LPSC Evaluation* at 91 .

Only two commenters challenge those agencies' conclusions, and they raise a single issue. In particular, AT&T and ASCENT argue that BellSouth does not meet its legal obligations because it does not make DSL transport services available for resale at a wholesale discount. *See AT&T Comments* at 69-70; *ASCENT Comments* at 2-8.

Even those parties, however, do not contest BellSouth's showing that the "residential class" or "low speed" DSL service that represents more than 99% of all BellSouth's virtual DSL circuit sales is a wholesale service. *See BellSouth Fogle Aff.* ¶¶ 3-7 (Application App. A, Tab G). Under the *Second Advanced Services Order*,[88] such wholesale DSL services need not be made available at a resale discount. *See Second Advanced Services Order* ¶ 14; 47 C.F.R. § 51.605(c).

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[88] Second Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 19237 (1999).

Rather, in a cursory three-paragraph discussion, AT&T argues solely about whether BellSouth's distinct high-speed "business class" DSL service – of which only 47 circuits had been sold in Georgia and Louisiana *combined* at the time of BellSouth's Application – is a wholesale service. *See BellSouth Fogle Aff.* ¶ 12. Even as to those services, moreover, AT&T does not contest BellSouth's showing that, under the relevant tariff, customers that purchase BellSouth's business-class service must provide all marketing, inside wiring, CPE, billing, and maintenance and repair functions, all of which indicate that BellSouth's product is intended to be a wholesale input into a larger product sold by ISPs and carriers. *See id.* ¶ 7; *Second Advanced Services Order* ¶¶ 14-15, 17.

Ignoring those key facts, AT&T bases its argument on BellSouth's statements that a few end-users have purchased the business-class service, and that, *in the past*, BellSouth has had some passing references to the use of this service by end-users in sales material – a practice that, as AT&T acknowledges, was stopped before this Application was filed. *See AT&T Comments* 70 & n.34. But, as the D.C. Circuit has made clear, the fact that some end-users chose to purchase a service does not change its wholesale character so long as the service is still *designed* for carrier or ISP use. *See Association of Communication Enters. v. FCC*, 253 F.3d 29, 32 (D.C. Cir. 2001) (the possibility that end-users may purchase services "tailored to the needs of ISPs" does not change character of service; only if end-users take service to a "substantial degree" might the Commission need to change its understanding). Given the very few business-class circuits that BellSouth has sold to anybody in Louisiana or Georgia – and the even smaller number sold to end-users – AT&T does not even try to meet the D.C. Circuit's test. Nor are the few references in past marketing statements relevant, where, as here, BellSouth ordered that

marketing material be destroyed before it filed this Application. *See BellSouth Fogle Aff.* ¶ 12. It is only BellSouth's compliance on the date of filing that is relevant here.

In contrast to AT&T, ASCENT does not dispute that BellSouth's current DSL telecommunication service offerings are wholesale, not retail, in nature. Instead, it argues that an "essential predicate" of the *Second Advanced Services Order* was that an ILEC would be required to have a retail telecommunications service offering in order to take advantage of the statutory rules governing wholesale offerings. *ASCENT Comments* at 4-5, 10. According to ASCENT, BellSouth's "machinations" render that supposed predicate "false." *Id.* at 10. This supposed legal predicate, however, is solely a creature of ASCENT's imagination. At no point does the *Second Advanced Services Order* suggest that an incumbent LEC is required to offer a retail DSL telecommunications product. Indeed, such a requirement would have been wholly inconsistent with the *Local Competition Order*,[89] where the Commission concluded that nothing in federal law prohibits an ILEC from choosing not to offer a retail service. *See Local Competition Order* ¶¶ 965-968; *see also MCI Telecomms. Corp. v. Southern New England Tel. Co.*, 27 F. Supp. 2d 326, 335 (D. Conn. 1998) ("nowhere does § 251 or any other provision of the 1996 Act require an ILEC to remain in the retail business or to resell its services at wholesale rates if it does *not* provide at retail telecommunications service to subscribers who are not telecommunications carriers"). [90]

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[89] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (subsequent history omitted).

[90] Nor do the Commission's pre-1996 Act *Computer Inquiry* decisions create an obligation to offer the transmission component of an information service at retail. Rather, the Commission merely required BOCs to make that transmission component available to ISPs. Thus, in the *Computer II Final Decision*, 77 F.C.C.2d 384 (1980), the Commission explained exactly what was required: "the same transmission facilities or capacity provided the subsidiary by the parent [] must be made *available to all enhanced service providers* under the same terms

Finally, ASCENT also fundamentally misconstrues this Commission's prior orders regarding the distinction between telecommunications and information services. While it is true that BellSouth is the provider of the underlying transmission facilities through which the high-speed Internet access services are provided (*ASCENT Comments* at 12), that does *not* mean that what the end-user receives is a telecommunications *service*. As the Commission explained in its *Report to Congress*,[91]

> A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. . . . If we decided that any offering that "included telecommunications" was a telecommunications service, we would need some test to determine whether the transmission component was "included" as part of the service. Based on our analysis of the statutory definitions, we conclude that an approach in which "telecommunications" and "information service" are mutually exclusive categories is most faithful to both the 1996 Act and the policy goals of competition, deregulation, and universal service.

When BellSouth provides the high-speed DSL Internet access service to end-users, it is offering an information service that "include[s] telecommunications" but that is entirely distinct from telecommunications. The key, as this Commission has recognized, is to view the service from the perspective of the end-user customer. "An offering that constitutes a single service from the end-user's standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components." *Id.* ¶ 58. A customer that receives high-speed

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and conditions" *Id.* at 474, ¶ 229 (emphasis added). That, of course, is precisely what BellSouth does through its wholesale tariffs.

[91] *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 59 (1998).

DSL Internet access service from America Online is receiving a "single service" allowing for "enhanced functionality, such as manipulation of information and interaction with stored data," *id.* ¶ 59 – in other words, an information service. In precisely the same way, a customer that receives high-speed DSL Internet access service from BellSouth is, from her standpoint, also receiving a "single service." That service is an information service, not a telecommunications service, and it is accordingly not subject to section 251(c)(4)'s resale requirements.[92]

Finally, even if there were some doubt on these points, which there should not be, this section 271 proceeding is not the proper place to resolve this issue. This Commission's 1996 Act orders do not come close to enunciating a rule that a telecommunications component of a bundled information service should be understood as a separate retail service if, and only if, the information service is provided by a BOC. Indeed, for the reasons discussed above, the Commission's orders appear to compel a directly contrary result. If the Commission believes there is doubt on this issue, the appropriate forum for resolving such doubts is a rulemaking proceeding. As the Commission made abundantly clear in the *New York Order* and the *Texas Order*, and as it successfully argued to the D.C. Circuit in review of the *New York Order* in *AT&T Corp.*, 220 F.3d 607, a section 271 proceeding is not an appropriate forum for the resolution of interpretive disputes or industry-wide questions of general applicability. *Texas Order* ¶¶ 22-27. Nor is it appropriate for the Commission to create additional obligations – BellSouth need not "demonstrate compliance with new local competition obligations that were unrecognized at the time the application was filed." *Id.* ¶ 27. Finally, "it would be inequitable to require" BellSouth alone to comply with novel obligations with respect to information services

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[92] As Eric Fogle reiterates in his reply affidavit (Reply App., Tab D), BellSouth will provide wholesale DSL service or its bundled information service product over resold lines.

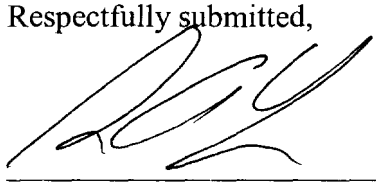
simply because it "has a section 271 application pending before the Commission." *New York Order* ¶ 31.

The Commission should not make this 271 proceeding the vehicle for establishing such a new interpretation of the 1996 Act.

CONCLUSION

For the reasons presented above and in BellSouth's initial filing, this Joint Application should be granted.

Respectfully submitted,



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Attachment A

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